

PAROL<sup>1</sup> TRUSTS--EXPRESS DECLARATION<sup>2</sup> OF TRUST IN PERSONAL PROPERTY.<sup>3</sup>

The (state number) issue reads:

"[Is] [Was] (identify settlor's personal<sup>4</sup> property) held in trust by (name alleged trustee)<sup>5</sup> under an express declaration of trust for the benefit of (name alleged beneficiary)?"

You will note that in this issue I have used the word "trust." A trust is a legal relationship between persons. A trust exists when one person declares that certain property he owns must be handled in a particular way for someone's benefit. An "express declaration of trust" is simply a legal relationship that has been "expressly declared" by a person. This declaration can be expressed in spoken words. It can be expressed partially in writing and partially by

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<sup>1</sup>Parol evidence may be used to prove a declaration of trust in personalty. Written trusts are governed under rules applicable to contracts generally but nonetheless must meet certain requirements. The written words used must be sufficient to create the trust, and the written declaration must identify the trust's subject matter, object and beneficiary with reasonable certainty. *Wachovia Bank & Trust Co. v. Taylor*, 255 N.C. 122, 126, 120 S.E.2d 588, 591 (1961).

<sup>2</sup>*Witherington v. Herring*, 140 N.C. 495, 53 S.E. 303 (1906); *Ellis v. Vespoint*, 102 N.C. App. 739, 742, 403 S.E.2d 542, 544 (1991); *Williams v. Mullen*, 31 N.C. App. 41, 228 S.E.2d 512 (1976).

<sup>3</sup>Since the declaration must be accompanied by a present conveyance of the real estate, parol trusts in real estate can never arise simply by declaration. Thus, this instruction will be inapposite to parol trust cases involving real estate. However, with a present conveyance, N.C.P.I. Civil--865.50 or 865.55 may be applicable.

<sup>4</sup>A parol trust in real property cannot be raised by declaration unless it is accompanied by a present transfer of the real estate. *Beasley v. Wilson*, 267 N.C. 95, 147 S.E.2d 577 (1966); *Rhodes v. Raxter*, 242 N.C. 206, 87 S.E.2d 265 (1955); *Wall v. Sneed*, 30 N.C. App. 680, 228 S.E.2d 81 (1976).

<sup>5</sup>The settlor may serve as trustee.

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spoken words.<sup>6</sup> It does not matter how the legal relationship involving an "express declaration of trust" is created as long as the parties have expressly declared and acknowledged the existence of the legal relationship.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by clear, strong and convincing evidence,<sup>7</sup> four things:

First, that (*name alleged settlor*) used sufficient words to declare the creation of a trust. No particular type of words are necessary. Neither the words "trust" nor "declaration," nor any other technical term need be used. It is sufficient that a person's words reasonably express that certain property belonging to him be taken by another and handled in a particular way so as to benefit someone.

Second, that the subject matter of the trust can be determined with reasonable certainty from (*name alleged settlor's*) words.

Third, that the object or purpose of the trust can be determined with reasonable certainty from (*name alleged settlor's*) words.

And Fourth, that the identity of the beneficiary of the trust can be determined with reasonable certainty from (*name alleged settlor's*) words.

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<sup>6</sup>A trust that is written is not a *parol* trust. However, there may be circumstances where the alleged trust is expressed partially in writing and partially by spoken words.

<sup>7</sup>See N.C.P.I.--Civil 101.11

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Finally, as to the *(state number)* issue on which the plaintiff has the burden of proof, if you find by clear, strong and convincing evidence that *(identify property)* was held in trust by *(name alleged trustee)* under an express declaration of trust for the benefit of *(name alleged beneficiary)*, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

